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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: CALIFORNIA SERVICE CENTER

Date: JAN 29 2003

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Multinational Executive or Manager Pursuant to Section 203(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(C)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center approved the immigrant visa petition. Upon further review of the petition, the director determined that the beneficiary was not eligible for the classification sought. Accordingly, the director served the petitioner with notice of his intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition on November 1, 2002. The matter is now before the Associate Commissioner for Examinations on appeal. The case will be remanded to the director for further action consistent with this decision.

The petitioner is a California corporation that claims to be a subsidiary of Bai Yun Chang (Guangzhou) Enterprise Company of the People's Republic of China (China). The petitioner's stated business plan is to engage in international import and export, and it seeks to employ the beneficiary as its vice president/business manager. The petitioner endeavors to classify the beneficiary as a multinational executive or manager pursuant to section 203(b)(1)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(C).

The director revoked his approval of the petition because it appeared that the Service made an error in finding that the proffered position would be in a primarily executive or managerial capacity.

On appeal, counsel states that the proffered position is in a primarily executive capacity and he submits evidence in support of his assertions.

Pursuant to 8 C.F.R. 103.2(b)(16)(i), a director must provide all derogatory information to a petitioner if that information will result in an adverse decision. In the instant case, a review of the director's September 19, 2002 Notice of Intent to Revoke reveals that the director informed the petitioner that "[o]n February 27, 2002, the Service received a Report of Investigation from the American Consulate/Embassy in Guangzhou, China for further review and action." However, the Notice of Intent to Revoke does not state the derogatory information that was contained in the Report of Investigation.

The director's decision to issue to the petitioner a Notice of Intent to Revoke was based upon the consulate's investigation. Pursuant to section 205 of the Act, a notice of intention to revoke approval of a visa petition is not properly issued unless there is "good and sufficient cause" and the notice includes a specific statement not only of the facts underlying the proposed action, but also of the supporting evidence. A decision to revoke approval of a visa petition will not be sustained where the notice of intention to revoke was not properly issued. Matter of Esteime, 19 I&N Dec. 450 (BIA 1987).

Here, while the director disclosed that he received a Report of Investigation from the U.S. Consulate in Guangzhou, China, the director did not reveal the supporting evidence underlying the proposed action, namely, the contents of the Report of Investigation. The director's failure to reveal such information precluded the petitioner from being able to prepare a full argument in rebuttal to the director's Notice of Intent to Revoke, as it could neither explain nor rebut the evidence that the consulate investigation uncovered. Thus, the Notice of Intent to Revoke was not properly issued.

Accordingly, this case will be remanded to the director so that he may disclose the findings of the consular investigation to the petitioner and allow the petitioner to present an argument or evidence in rebuttal to the proposed grounds for revocation. The director may request any additional evidence deemed necessary to assist him with his determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the Associate Commissioner for review.